

Personal Wireless Services Facilities Ordinance



325' Hampshire Hills Tower in Rome, Maine

Town of Rome, Maine
Approved March 2015

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Introduction

Demand for wireless service continues to increase. Nationwide telecommunication service providers have installed more than 80,000 transmission sites. Industry analysts predict that between 100,000 and 200,000 new cell sites will be needed to meet the growing demand of wireless service customers. Half of these sites will likely require new towers, especially in suburban and rural areas.

A new generation of wireless communications technology helps drive this demand. Cellular sites are converting from analog to digital, which carries more calls simultaneously and allows caller ID and voicemail. Personal Communication Services (PCS) is digital communication that provides higher quality reception and can also transmit data. PCS is being expanded across the State. PCS uses higher frequencies than cellular resulting in signals traveling shorter distances. This means PCS requires more towers. Wireless services will be expanding to wireless internet wireless cable and wireless data. This trend will also require more Personal Wireless Service Facilities (PWSF) closer to each other.

Telecommunication technology and the companies providing it are protected to some degree under the federal Telecommunications Act of 1996. This act bars local regulations that have the effect of prohibiting the siting of telecommunication towers. Unreasonable discrimination among providers is also prohibited. Permit decisions must be made within a reasonable timeframe and must be based on a factual record e.g. findings of fact and conclusion of law. This act does not allow municipal regulation of radio frequency emissions.

Telecommunication towers can be controversial. The three big issues are typically visual impact, height, and location. An effective ordinance needs to address these issues and meet the requirements of the Telecommunications Act.

This PWSF ordinance strives to address the visual impact, height and location of towers while meeting the requirements of the federal law. Primary sources for this Ordinance are the Town of Rome Wireless Telecommunications Facility Siting Ordinance adopted in 2002 and KVCOG's 2009 model PWSF ordinance developed in 1997 for Durham, New Hampshire and the Cape Cod Commission by Kreines and Kreines, a legal firm specializing in towers. The same or similar ordinances were adopted in the late 1990s and are still being used by at least 47 municipalities in New Hampshire.

This ordinance is concerned with permitting towers that meet signal coverage needs and blend into areas where visibility may be a particular concern such as residential areas, historic districts, and scenic areas. There is also a provision for professional services at applicant's expense to assist with municipality authority review.

This ordinance is designed to fit into the Town of Rome land use governance, which has a review structure and is a product of reviewing numerous ordinances and reports related to telecommunication towers. **This local law repeals the former Rome Wireless Telecommunications Facility Siting Ordinance adopted 2002.**

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SECTION 1: TITLE

This Ordinance shall be known and cited as the "Town of Rome Wireless Telecommunications Facility Siting Ordinance" and will be referred to herein as "this Ordinance."

SECTION 2: AUTHORITY AND APPLICABILITY

This Ordinance is adopted pursuant to the enabling provisions of Article VI II, Part 2, Section I of the Maine Constitution; the provisions of the Municipal Home Rule Authority (30A MRSA 3001 et. seq.) and the provisions of the Planning and Land Use Regulation Act. Title 30-A MRSA Section 4312 et. seq. Persons or entities wishing to establish a wireless telecommunications facility or make major modifications to an existing wireless telecommunications facility within the Town of Rome shall first obtain a conditional use permit from the Rome Planning Board (hereinafter "Planning Board") and shall be subject to the provisions of this Ordinance, including, without limitation, the duty to reasonably allow future collocation as a condition of approval. The Planning Board and the Selectmen, through the Code Enforcement Officer, shall administer and enforce this Ordinance.

SECTION 3: PURPOSE

These standards are designed and intended to balance the interests of the residents of Rome, wireless communications providers and wireless communication customers in the siting of wireless communications facilities within the town. Beyond the objectives described in other provisions of this Ordinance, these Personal Wireless Services Facilities (PWSF) standards are also intended to:

- A. Implement a municipal policy concerning the provisions of wireless telecommunications services, and the siting of their facilities;
- B. Establish clear guidelines, standards and time frames for the town to regulate placement, design and appearance of wireless communications facilities while preserving the character and appearance of the Town of Rome;
- C. Ensure that all entities providing PWSF within the municipality comply with the ordinances of Rome;
- D. Permit Rome to fairly and responsibly protect public health, safety, welfare and quality of life;
- E. Encourage the carriers of PWSF to co-locate, thus minimizing adverse visual impacts on the community;
- F. Support the goals and policies of the Comprehensive Plan, especially the orderly development of Rome with minimal impacts on existing residential uses;
- G. Protect the Town of Rome's environmental resources and rural character as consistent with the goals and objectives outlined by Rome's Comprehensive Plan;
- H. Provide for the removal of towers and associated structures that are no longer being used for wireless communications purposes;

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- I. Minimize any potential adverse effect of PWSF on property values and protect historic and scenic areas within the Town and;
- J. Protect the scenic and visual character of Rome.

SECTION 4: CONSISTENCY WITH FEDERAL LAW

These regulations are intended to be consistent with state and federal Law, particularly the Telecommunications Act of 1996 in that: a) they do not prohibit or have the effect of prohibiting the provision of personal wireless services; b) they are not intended to be used to unreasonably discriminate among providers of functionally equivalent services, and c) they do not regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

Federal and State Requirements - All PWSFs must meet or exceed current standards and regulations of the FAA, FCC and any other agency of the federal or state government with the authority to regulate PWSFs. If such standards and regulations are changed, then the owners of the facilities governed by this ordinance shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling agency. Failure to bring a PWSF into compliance with such revised standards and regulations shall constitute grounds for removal of the PWSF as abandoned, in accordance with Section 14, at the owner(s) expense through the execution of the posted security.

SECTION 5: CONFLICT WITH OTHER ORDINANCES

Whenever a provision of this Ordinance conflicts with or is inconsistent with other provisions of this Ordinance, or of any other Ordinance, regulation, or standard, the more restrictive provision shall apply.

SECTION 6: EFFECTIVE DATE

The effective date of this Ordinance, if adopted by vote of the public at a Town Meeting or by referendum, shall be the earlier of the Town's adoption of its moratorium on October 20, 2014 or the date of this Ordinance's adoption at Town meeting, and upon adoption repeals the Town's Wireless Telecommunications Facility Sitting Ordinance, adopted in 2002. Should this Ordinance for any reason fail to be legally cognizable and enforceable with respect to an applicant, it shall be deemed not to have supplanted or superseded said 2002 Ordinance with respect to that applicant and said 2002 Ordinance shall be deemed to be in full force and effect with respect to that applicant.

SECTION 7: EXEMPTIONS

- A. The following are exempt from the provisions of this Ordinance:
 - 1. Police, fire, ambulance, and other emergency dispatch.

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2. Temporary wireless communication facilities for emergency communications.
3. Amateur (Ham) radio as licensed by the Federal Communications Commission [FCC].
4. Citizens' Band Radio.
5. Parabolic antennas less than twelve (12) feet in diameter, that are an accessory use of the property.
6. Maintenance, repair or reconstruction of an existing wireless telecommunications facility and related equipment, provided that there is no major modification of the facility.
7. Temporary wireless telecommunications facilities, in operation for a maximum period of one hundred eighty (180) days.
8. Any antenna that is an accessory to a residential dwelling.
9. Pre-existing Facility. This Ordinance does not render illegal any structure, facility or use which legally existed, has received permit approval, or is in a pending approval process prior to the effective date of this Ordinance.
10. Radio dispatch services for local businesses.

B. No wireless telecommunication facility as listed in Section 7 shall be considered exempt from Section 11, B.

C. No wireless telecommunication facility shall be considered exempt from this Ordinance by virtue of collocation with an exempt facility as listed in Section 7.

SECTION 8: GENERAL APPLICATION REQUIREMENTS AND PROCEDURES

A. Pre-application conference.

All persons seeking approval of the Planning Board under this Ordinance shall meet with the Planning Board no less than thirty (30) days before filing an application. At this informal meeting, the Planning Board shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this Ordinance.

B. Fees

1. Planning Board application fee:

A conditional use permit application for Planning Board approval shall include payment of an application fee of \$1500.00. In addition to further qualifications, the application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of the fee if the application is withdrawn within fifteen (15) days of the date of receipt of the application by the Planning Board, less all expenses incurred by the Town of Rome to review the application.

2. Planning Board review fee:

An applicant for a conditional use permit shall pay all additional reasonable and customary fees, i.e.: certified mailings, advertisements, etc., as well as expert fees as provided hereinbelow, incurred by the Town that are necessary to review the application and assure that the facility meets the conditions of this Ordinance after completion.

C. A proposal to construct or modify a PWSF must include evidence of a binding written commitment from a duly licensed carrier to utilize the tower to provide wireless communication services.

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D. A PWSF may be permitted as a {conditional use} upon compliance with this Section and other applicable provisions of this Ordinance and other applicable Town ordinances.

E. No construction, alteration, modification, or installation of any PWSF shall commence without a {conditional use} permit first being obtained from the Rome Planning Board except for antenna installations as per Section 11.P.

F. The applicant must provide an inventory of all the provider's applied for, existing and approved towers, antennae or sites within the Town of Rome and locations in surrounding communities where wireless telecommunications are proposed to be utilized in conjunction with the facility proposed in the application, in addition to service area maps and network maps of the applicant's existing and proposed facilities in Kennebec County.

G. The applicant must provide Identification of any other PWSFs existing or proposed on the site.

H. The applicant must provide details of and a site plan showing all existing or proposed accessory structures including buildings, parking areas, utilities, gates, access roads, etc.

I. The applicant must provide evidence that written notice was sent, by pre-paid first class United States mail, to all other such tower and alternative tower structure owners and licensed wireless communication providers that could furnish service to the Town of Rome utilizing existing towers and alternative tower structures and to owners of such towers. This notice shall state the applicant's siting needs and include a request for all relevant information regarding the co-location capabilities of the existing or previously approved facilities. Evidence that this notice requirement has been fulfilled shall include a name and address list, copy of the notice that was sent, and a return receipt request that the notices were sent as required.

J. Evidence must be provided that none of the existing or previously applied for or approved towers and alternative structures within the Town of Rome can accommodate the communications equipment (antennae, cables, etc.) planned for the proposed tower. Such evidence shall include documentation from a qualified and licensed professional engineer that:

- i. Planned necessary equipment would exceed the structural capacity of existing and approved PWSF and alternative structures considering (1) the existing and planned use of those PWSFs and alternative structures, and (2) the existing and approved PWSFs cannot be reinforced or enlarged to accommodate planned or equivalent equipment at a reasonable cost;
- ii. Planned equipment will cause electromagnetic frequency interference with other existing or planned equipment for that PWSF or alternative structure, and the interference cannot be prevented at a reasonable cost;
- iii. Existing or approved PWSFs and alternative structures do not have space on which planned equipment can be placed so it can function effectively and at least in parity with other similar equipment in place or approved; or

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- iv. Other documented reasons make it technically or financially unfeasible to place the equipment planned by the applicant on any of the existing or previously applied for or approved PWSFs and alternative structures.

K. Evidence must be provided that the proposed PWSF cannot be co-located on any existing or previously approved tower sites or suitable structures. Evidence should include an assessment of whether such PWSF sites could be changed to accommodate the proposed tower, and a detailed description of the projected cost of shared use of the existing or approved PWSF site or other suitable structure(s).

L. A report must be provided from a Registered Professional Engineer that describes the PWSF, the technical reasons for the PWSF design and the capacity of the PWSF, including the number(s), type(s), and volume(s) of antennae that it can accommodate and the basis for the calculation of capacity.

M. A letter of intent must be provided that commits the PWSF owner and its successors in interest to:

- i. respond in a timely, comprehensive manner to a request for information from a potential co-location applicant;
- ii. negotiate in good faith for shared use by third parties that have received an FCC license or permits; and
- iii. allow shared use if an applicant agrees in writing to pay reasonable market-rate charges.

N. Proof of financial capacity to build, maintain, and remove the proposed PWSF must be submitted.

O. Photos showing site vegetation, existing and adjacent structures, views of the proposed site from near and far and from the proposed site, topography, and land uses on the proposed parcel and on abutting properties must be provided.

P. Landscaping plan reflecting location of proposed screening and fencing, planting areas, proposed plantings, existing plant materials to be retained and trees or shrubs to be removed must be submitted.

Q. Elevation drawings, cross-sectional area or silhouette, of the facility, drawn to scale, and showing all measurements, both linear and volumetric, showing front, sides and rear of the proposed facility including all fencing, supporting system for transmission cables running between the tower and accessory structures, control panels, antennae, and existing structures and trees. Reference any design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

R. Detail of the tower base or method of attachment to a structure. If the facility will be attached to an existing building or structure, provide measurements and elevations of the

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structure.

S. An analysis of the visual impact of the proposed facility, including the tower and supporting structures, which may include a photo montage, field mock up, or other techniques, that identify the potential visual impacts, at design capacity, of the proposed facility. Consideration shall be given to views and viewsheds from the areas designated as scenic areas, vistas, and overlooks by the Town of Rome, in Appendix A of this Ordinance, roads, public areas, private residences, historic resources, including historic districts and structures listed in the National Register of Historic Places, and archaeological resources. The analysis of the impact on historical and archaeological resources shall meet the requirements of the Maine State Historical Preservation Officer in his/her review capacity for the FCC.

T. The applicant shall submit written proof that the proposed use and the facility comply with the FCC regulations on radio (RF) frequency exposure guidelines and a propagation map showing the proposed radio frequency coverage.

U. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Town of Rome prior to the beginning of the federal 30 day comment period, and the Town of Rome process, shall become part of the application requirement.

V. The applicant will provide information as to whether any of the Personal Wireless Service carriers providing service to the Town of Rome use the system known as cable micro-cell integrator/headend interface converter (CMI/HIC) which utilizes cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones and whether there are any such carriers using CMI/HIC in Kennebec County.

W. Notification of Application:

The applicant shall be responsible for insuring that abutting landowners and landowners within 500' of the site property boundaries be notified of the application by certified mail no later than thirty (30) days after the Rome Planning Board pre-application conference as detailed in Section 8A, and that receipts and copies of the letters be forwarded to the Planning Board, the Rome Board of Selectpersons and the Rome Code Enforcement Officer. The Planning Board shall post a notice of the application for public review at the Town Office and in at least two places of public gathering within the Town of Rome.

X. The applicant has the burden of proving that the application is and that the project will be in compliance with all of the requirements of this Ordinance.

SECTION 9: PROVISION FOR HIRING INDEPENDENT CONSULTANTS

A. Upon submission of an application for a conditional use permit under this Ordinance, the Rome Planning Board shall hire independent consultants whose services shall be paid for by the applicant. These consultants shall be qualified professionals with an appropriate combination of training, record of service, and certification in one of the following fields: a) telecommunications/radio frequency engineering; b) structural engineering; and, if determined

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necessary by the Rome Planning Board, c) other fields of expertise.

B. Upon submission of a complete application for a conditional use permit under this Ordinance, the Rome Planning Board shall provide its independent consultant(s) with the full application for their analysis and review, including the construction and modification of the site, once permitted, and any site inspections.

C. An applicant shall deposit with the Town escrow funds sufficient to reimburse the Town for all reasonable costs of the Town's consultant(s) in providing expert evaluation and consultation to any agency of the Town in connection with the review of any application, including any expert consultation services deemed necessary by the Planning Board. The initial deposit for the expert review of a new wireless facility shall be \$8,500. The initial deposit for the expert review of a co-location or modification shall be \$6,000. The placement of the deposit with the Town shall precede the pre-application meeting, or shall occur at such later time as the Planning Board may direct. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town employing its services related to the application.

D. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Town or consultant, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be promptly refunded to the applicant.

E. When notified by the Town that additional escrow is required, the applicant may request copies of invoices paid to consultants and/or experts. If the applicant finds errors in those invoices, the applicant may ask the Town to audit those specific items for reasonableness, and may request relief there from.

F. The total amount of the funds needed as set forth in Subsection C of this section may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

G. Notwithstanding the above, there shall be a fee cap as to the total consultant fees to be charged to the applicant in a case, which shall be the greater of \$17,000 or 10% of the highest annual lease payment to be made by the applicant to the owner of the property under the lease authorizing placement of the wireless telecommunications facilities at a given site. However, the fee cap shall not apply as to any fees which the Planning Board determines to be attributable to the dilatory or otherwise bad faith actions of the applicant in providing a complete application or in proceeding with a public hearing.

SECTION 10: CONFORMITY WITH APPLICABLE LAWS

A. **Conditional Uses:** No tower or telecommunications facility shall be erected,

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constructed, or installed without first obtaining a conditional use permit from the Rome Planning Board. A conditional use permit is required for all new Wireless Telecommunications Facilities and all major modifications to an existing such facility.

B. Applicable Laws: In acting on the conditional use permit application, the Rome Planning Board shall proceed in accordance with local, state, federal, and local land use planning regulations and policies. The siting and construction of all PWSFs in the Town of Rome must meet all of the applicable standards in the ordinances of the Town of Rome and be consistent with the Town of Rome Comprehensive Plan.

C. Findings: All applicable conditions in Sections 11 and 12 of this Ordinance shall be complied with. After the Planning Board finds that an application is complete under the requirements of this Ordinance, including all of the documentation requirements of Sections 8 and 12, the Planning Board shall determine whether, based upon the application submitted, all applicable requirements and conditions in Sections 11 and 12 and elsewhere in this Ordinance have been demonstrated by the applicant to be met. If one or more reports from experts are required by the Planning Board, the application is not complete until the report(s) has/have been submitted. If the Planning Board finds that an application is not complete, it shall not consider the application until such time as it is determined to be complete. The Rome Planning Board must in consultation with independent consultant(s) where such expert advice is reasonably necessary, make all of the following applicable findings before granting the conditional use permit:

1. Applicant is not already providing adequate coverage and adequate capacity to the Town of Rome.
2. Applicant is not able to use existing tower/facility sites either with or without the use of repeaters to provide adequate coverage and adequate capacity to the Town of Rome.
3. Applicant has endeavored to provide adequate coverage and adequate capacity to the Town of Rome with the least number of towers and antennas technically and economically feasible.
4. Applicant is not able to use "microcell PCS" or other reasonably available alternate technology in lieu of towers.
5. Efforts have been made to locate new towers adjacent to existing towers.
6. Applicant has agreed to rent or lease suitable available space on the tower, under the terms of a fair-market lease, with reasonable conditions and without discrimination to other telecommunications providers.
7. The proposal shall comply with FCC Rules & Regulations, and procedures outlined in FCC Bulletin 65, regarding exposure from electromagnetic radiation and that the required monitoring program (see Section 13 of this Ordinance) has been developed and shall be paid for by the applicant.
8. Towers and telecommunications facilities shall be located so as to minimize the following potential impacts
 - a. Visual/Aesthetic: Towers shall, when possible, be sited off ridge lines, and where their visual impact is least detrimental to scenic areas and vistas.
 - b. Devaluation of property values.
 - c. Siting shall be in as low population density areas as possible.
 - d. Safety hazards: Concerns include structural failure, ice accumulation and discharge.
 - e. Electromagnetic radiation: Steps must be taken to prevent access to any areas

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in which exposure might exceed the FCC guidelines.

D. **Balloon Test:** The Planning Board may require a certified balloon test accurately simulating the height and location of the proposed PWSF. Public notice shall be given of the date and time of such test not less than 10 days prior thereto. The applicant shall provide photographs of such test from locations around the Town including those designated by the Planning Board and within 20 miles from which the balloon(s) is visible.

E. **Indemnity:** The owner of the PWSF, as a condition of approval, shall execute an agreement that it will indemnify and hold the Town, its officials and employees harmless from all claims against the Town for personal injury, property damages, and loss, including costs of defense and reasonable attorney's fees, arising from or related to the construction, operation repair and removal of the PWSF or any part thereof.

F. **Documentation of Approval:** Within thirty (30) days of completed Planning Board review of the application, the Planning Board shall approve, approve with conditions, or deny the application in writing, and submit the findings on which that decision is based in writing to the applicant at the same time as it issues its written decision. This time period may be modified upon agreement between the applicant and the Planning Board so long as such agreement is documented in writing at the time it is made and as necessary to conform to any applicable requirements of the Federal Telecommunications Act.

G. **Commencement of Operation:** Operation of a PWSF shall commence no later than nine (9) months from the date the application was approved. If the PWSF is not operating within this time period, the Planning Board, at its discretion, may revoke its approval, regardless of whether construction has begun.

H. **Notification of Continued Use:** Beginning 12 months after Planning Board approval and continuing on an annual basis thereafter, the owner of a PWSF shall provide the Planning Board with written, signed certification that the PWSF is being used to provide Personal Wireless Services as defined. Failure to comply with this requirement shall constitute an admission that the PWSF is not in use and has been abandoned.

I. **Discontinuance:** At such time that the owner plans to temporarily or permanently discontinue operation of a PWSF, the owner will notify the municipality by certified U. S. Mail of the proposed date of temporary or permanent discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to temporary or permanent discontinuation of operations. In the event that the owner fails to give notice of temporary discontinuance, the PWSF shall be considered permanently discontinued and abandoned upon the discontinuation of operation.

SECTION 11: GENERAL PROJECT REQUIREMENTS

The following requirements cannot be waived, are made conditions of approval of any PWSFs, and are ongoing requirements of a permitted PWSG facility. To be approved by the Planning

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Board, an application must meet all of the following standards, criteria, and requirements:

A. **Fencing and Signs:** The area around the tower and communication equipment shelter(s) shall be completely fenced for security to a height of six feet, gated and locked. A sign no greater than two (2) square feet indicating the name of the facility owner(s) and a 24 hour emergency telephone number, either in-state or toll-free, shall be posted adjacent to the entry gate. In addition, No Trespassing or other warning signs, and the federal tower registration plate, where applicable, may be posted on the fence or as required to meet federal requirements.

B. **Height of Towers:** New towers or heightened towers shall not exceed the minimum height necessary to provide adequate coverage for the telecommunications facilities proposed for use on the tower. Applicant may submit a request for additional height to accommodate future sharing, or to provide indirect service as described in Section 12, A, 3, and shall provide design information and data to justify such additional height. In no case shall facility height exceed 199 feet, triggering the FAA and FCC rules and regulations regarding lighting of towers. Exceptions may be made in the case of personal wireless service providers who shall adequately demonstrate, to the satisfaction of the Planning Board, in consultation with an independent qualified consultant (as specified by Section 9) that denial of greater height would effectively prohibit service.

1. **Height Outside A PWSF Overlay Zone.** The vertical distance between the highest point of a PWSF (ground-mounted or building mounted) and the mean natural grade at the base of the structure or building shall not exceed one hundred (100) feet, provided, however,
 - a. **Height, Utility Structures.** if antennas are located on an existing utility structure, including water tower, electrical transmission tower, or utility pole, the vertical height of the existing structure may not be increased by more than ten (10) feet;
 - b. **Height, Existing Buildings.** the highest point of a building mounted PWSF on an existing building may not be ten feet higher than the existing building unless the PWSF is completely camouflaged as provided in Section 11.D.6-8. and
 - c. **Height, Ground-mounted Facilities.** the highest point of ground mounted PWSF shall not exceed ten (10) feet above the average tree canopy height (ATCH) of the trees located within an area defined by a one hundred fifty (150) foot radius or perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. In high density residential zone(s) (density is greater than 3 dwelling units per acre) and commercial zone(s) when there are buildings within 300 feet of the mount the highest point of ground-mounted PWSF shall not exceed ten (10) feet above the average building height within 300 feet of the mount.
 - d. **Average Tree Canopy Height (ATCH)** – ATCH shall be determined by a forestry or environmental consultant qualified to inventory tree height and determine the ATCH as defined in this Ordinance.
 - e. **Reconstruction of Nonconforming PWSF** - A non-conforming ground-mounted

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PWSF, removed or destroyed for any reason, may be reconstructed on the same site, provided that it complies with the height restrictions of this subsection.

C. Structural standards:

A new wireless telecommunications facility involving a tower must comply with the current Electronic Industries Association/ Telecommunications Industries Association. (EIA/TIA) 222. Revision. Standards for Steel Antenna Towers and Antenna Supporting Structures."

D. Performance and Design Standards: Tower(s) must be of a type that will maximize potential sharing. Applicant must demonstrate the future utility of such structure for expansion of service for applicant and other future applicants.

1. Antenna Types - Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A close mount may be required to minimize visual impacts.
2. Mounts - All ground mounts shall be of a mast or monopole type mount. Mounts affixed to the roof or side of a building shall be masts only. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction of a nonconforming structure permitted under Section 8.E.
3. Visibility - The applicant is encouraged to utilize enhancements to the property and must demonstrate that every reasonable effort has been made to cause the facility to have the least possible visual impact on the municipality.
Visual impacts are measured on the basis of:
 - a. Change in community scale, as exhibited in relative height, mass or proportion of the PWSF within their proposed surroundings.
 - b. New visible elements proposed on a contrasting background.
 - c. Different colors and textures proposed against a contrasting background.
 - d. Use of materials that are foreign to the existing environment.
4. Enhancements are measured on the basis of:
 - a. Conservation of opportunities to maintain community scale. e.g. buffering areas and low-lying building should not be compromised so as to start a trend away from the existing community scale.
 - b. Amount and type of landscaping and/or natural vegetation.
 - c. Preservation of view corridors, vistas, and view-sheds.
 - d. Continuation of existing colors, textures, and materials.
5. Visibility focuses on:
 - a. Eliminating or mitigating visual impact.
 - b. Protecting, continuing, and enhancing the existing environment.
 - c. If any portion of the site is within an area designated as a scenic area or scenic viewshed by the Town of Rome, (Scenic areas and viewsheds are listed in Appendix A) the applicant shall develop appropriate measures for the preservation of the values which qualify the site for such designation.

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6. Camouflage for Facilities on Roof of Existing Buildings:
 - a. PWSF shall be concealed or camouflaged within or behind existing or new architectural features to limit its visibility when PWSF extends above roof height of a building on which it is mounted. Facilities mounted on a roof of a building shall be stepped back from the front façade in order to limit their impact on the building's silhouette.
7. Camouflage for Facilities on Side of Existing Buildings:
 - a. PWSF mounted on a side of a building, shall blend with the existing building's architecture and the panels shall be painted or shielded with material consistent with the design features and materials of the building. All surfaces shall be non-reflective.
8. Camouflage for Ground-Mounted Facilities:
 - a. Ground-mounted PWSF outside a PWSF Overlay Zone shall be surrounded by a buffer of dense tree growth that begins at and extends continuously from ten (10) feet beyond the security barrier and portion of equipment shelter outside security barrier for a minimum distance of one hundred and fifty (150) feet and screens views of the facility in all directions with an exception in High Density Residential and Commercial zones noted in subsection 3.a.3. These trees must be pre-existing (pre-existing trees are preferred) on the subject property, planted on site, or be within a landscape easement on an adjoining site.
 - b. The one hundred fifty (150) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the PWSF owner's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.
 - c. A tree'd buffer may not be required for a PWSF in High Density Residential or Commercial zones when there are buildings within 300 feet of the mount and when the PWSF is camouflaged.
9. Color: To the extent that a PWSF extends above the height of the vegetation immediately surrounding it, the tower and antenna shall be of a color, that blends with the background or surroundings, such as dark brown/rust or comparable. All surfaces shall be non-reflective.
10. Equipment Shelters:
 - a. PWSF equipment shelters shall be designed consistent with one of the following design standards:
 - b. Equipment shelters shall be located in underground vaults; or
 - c. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the PWSF; or

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- d. Equipment shelters shall be camouflaged behind an effective year-round landscape screen, equal to the height of the proposed building and/or fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
- e. If mounted on the roof of a building, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

11. Driveways: If available, or reasonably available through the purchase of a legal right of way, existing entrances and driveways to serve a PWSF shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual traffic, and environmental impact. The traveled way of new driveways to serve a PWSF shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is required.

E. **Use of Repeaters:** The use of repeaters to assure adequate coverage, or to fill holes within areas of otherwise adequate coverage, while minimizing the number of required towers is permitted and encouraged. Applicants shall detail the number, location, power output and coverage of any proposed repeaters in their systems and provide engineering data to justify their use. Applicants not willing to use repeaters in their systems must provide engineering data justifying their non-use.

F. **Coverage Area:**

If primary coverage (greater than 50%) from the proposed telecommunications facility is outside Rome then the permit shall be denied unless the applicant can demonstrate an inability to locate within the Town which is primarily receiving service from the proposed facility.

G. **Advertising** shall not be allowed on any wireless telecommunications facility.

H. **Lighting:** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state or federal requirements. Where the FAA requires obstruction marking and/ or lighting, the applicant shall show evidence of a request for the least visually obtrusive scheme to the FAA. Security lighting may also be used as long as it is shielded to be down-directional to retain light within boundaries of the site, to the maximum extent practicable and be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.5 initial foot-candles above ambient light conditions.

I. **Setback Requirements:**

1. Safety zone: A new wireless telecommunications facility must be set back one hundred five percent (105%) of its height from all property lines. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement.

The following exemptions apply:

- a. The setback may be changed by the Planning Board upon a showing by the

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applicant that:

- i) The facility is designed to collapse in a manner that will not harm other property, and
- ii) Ice build-up and discharge will not present a public safety hazard, and
- iii) Any hazards to guy wires or tower structure will not adversely affect public safety.

b. An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

2. Existing wireless telecommunication facilities that undergo major modifications must meet setback requirements.

J. **Fall Zone for Ground Mounts:** In order to ensure public safety, the minimum distance from the base of any ground-mounted PWSF to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in paragraph 7 (m). The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review. Fall zones for PWSFs may overlap.

K. **Fall Zone for Mounts:** In the event that an existing structure is proposed as a mount for a PWSF, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing nonconforming structures, PWSFs and their equipment shelters shall not increase any non-conformities.

L. **Historic and Archaeological properties:** The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure, which is currently listed on, or eligible for listing on the National Register of Historic Places.

1. Any alteration made to an historic structure to accommodate a PWSF shall be fully reversible.

2. PWSFs within a historic district shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.

M. **Hazardous Waste:** No hazardous waste shall be discharged on the site of any PWSF. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.

N. **Noise** - PWSF shall not generate noise in excess of limits permitted under the municipal noise ordinance.

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O. **Alternative Tower Sites:** If the proposed ground-mounted PWSF does not meet the standards of this Ordinance because of excessive height, insufficient camouflage, a lack of screening by existing trees or buildings, or for other reasons making the consideration of alternative sites appropriate, then potential suitable alternative sites, where PWSFs can meet the standards and provide adequate signal coverage, need to be inventoried and evaluated. More than one site each with a PWSF (that may be shorter than originally proposed) must be considered. If the applicant determines that there are no suitable alternative sites, the Town of Rome may hire at the applicant's expense a radio frequency engineer to independently assess if there are suitable alternative sites.

P. **Antenna Installation:** An antenna or antenna array may be located, without further approval, on any structure mounted PWSF legally existing prior to the effective date of Section 10.G., and on any PWSF subsequently approved under the provisions of this Ordinance, provided that:

1. All carriers using the PWSF comply with provisions of this Ordinance including the requirements of co-location;
2. All carriers using the PWSF comply with the terms and conditions of approval of the PWSF by the Planning Board; and
 - I. There is no increase in the PWSF height, carrier capacity, or area of the security barrier.

Otherwise, site plan review and a [conditional use] permit is required.

SECTION 12: DOCUMENTS REQUIRED TO BE SUBMITTED FOR A COMPLETE APPLICATION

A. **Evidence of Need:**

1. Existing Coverage:

Applicant shall provide written documentation demonstrating that existing telecommunications facility sites and other existing structures of suitable height in Rome and within a 20 mile radius of the proposed site cannot reasonably be made to provide adequate coverage and/or adequate capacity to the Town of Rome. The documentation shall include, for each facility site listed which is owned or operated by the applicant, the exact location (in longitude and latitude, in degrees, minutes and seconds to the nearest tenth), ground elevation, height of tower or structure, type of antennas, antenna gain, height of antennas on tower or structure, output frequency, number of channels, power input and maximum power output per channel. Potential adjustments to these existing facility sites, including changes in antenna type, orientation, gain, height or power output shall be specified. Radial or tiled coverage plots showing each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.

2. Repeaters:

Applicant shall demonstrate with written documentation that they have analyzed the feasibility of repeaters in conjunction with all facility sites listed in compliance with

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Section 12, A, 1 (above) to provide adequate coverage to the Town of Rome and reasonably concluded that the use of repeaters would not provide such adequate coverage. Radial or tiled coverage plots of all repeaters considered for use in conjunction with these facility sites shall be provided as part of the application.

3. Indirect Service:

Applicant shall demonstrate which portion of a tower or structure and which antennas, if any, are to reduce or eliminate reliance on land-lines, or otherwise provide communications capability to the applicant, as opposed to providing direct service to customers. Such provision of indirect service may be considered if reasonable alternatives are not available and the incremental effect is consistent with the purposes set forth in Section 12, A,1 of this Ordinance.

4. Five-Year Plan:

All applications shall be accompanied by a written five-year plan for the utilization of the proposed facilities. This plan shall include justification for capacity in excess of immediate needs, as well as plans for any further development within the Town.

B. Legal and Technical Documentation for Telecommunications Towers and Facilities:

1. Federal Permits:

Applicant shall submit copies of all pertinent submittals and showings pertaining to:

- a. FCC permitting/licensing, including Environmental Assessments and Environmental Impact Statements as required by National Environmental Protection Act of 1969, section 47, and documentation from Maine Historical Preservation Society;
- b. FAA Notice of Construction or Alteration aeronautical studies;
- c. All pertinent data, assumptions and calculations relating to service coverage;
- d. All pertinent calculations and/ or measurement data related to non-ionizing radiation exposure, regardless of whether categorical exemption from routine environmental evaluation under the FCC rules is claimed.

2. Contacts: Applicant shall submit the exact legal name, address or principal place of business and phone number of the following:

- a. Applicant. If any applicant is not a person, it shall also give the type of business entity and the state in which it is registered.
- b. Person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.
- c. Person to be contacted in the event of an emergency involving the facility. This person shall be available on a 24-hour basis and authorized by the applicant to act on behalf of the applicant regarding an emergency situation.
- d. Owner of the property on which the proposed tower shall be located, and of the owner(s) of the tower or structure on which the proposed facility shall be located. Written permission of the owner(s)' to apply for a conditional use permit

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shall also be submitted along with written permission from the owner(s) of the proposed property(s) or facilities site(s) for the Town's independent consultant(s) to conduct any necessary site visit(s).

e. Names and addresses of abutting landowners and landowners within 500' of site property boundaries.

3. Surety: Planning Board shall require applicant to show evidence of financial ability to cover tower construction, maintenance, removal, and insurance coverage.

4. Commitment to Available Space: Applicants for conditional use permit for new tower construction or major modification of an existing facility shall provide a written, irrevocable commitment valid for the duration of the existence of the tower, to rent or lease any and all available space for collocation on the tower at fair market prices and terms, without discrimination to other telecommunications providers.

5. Lease of Tower: Applicants for a conditional use permit for a facility to be installed on an existing structure shall provide a copy of its lease/contract with the owner of the existing structure.

6. Contract with Provider: Applicants for a conditional use permit must be a telecommunications provider or must provide a copy of its lease/ contract with an existing telecommunications provider. A conditional use permit shall not be granted for a tower to be built on speculation.

7. Plans and Maps: Survey plans shall be stamped and signed by a land surveyor registered in Maine. Signal propagation and radio frequency studies, plots and related material shall be prepared, clearly identified and signed by a qualified radio frequency engineer. Plans shall be on 24" x 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no less precise) than listed below. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s), and original seal(s) and signature(s) of the professional(s) who prepared the plan.

a. **Location Map:** Copy of a portion of the most recent U.S.G.S. Quadrangle map showing the area within at least two miles from the proposed facility site. Indicate the tower location and the exact latitude and longitude (degrees, minutes and seconds to the nearest tenth).

b. **Vicinity Map** at a scale of 1" = 416' (1:5000) with contour intervals no greater than 10 feet (3 meter) showing the entire vicinity within a 2500' radius of the facility site, and including the topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites, habitats for endangered species. Indicate the property lines of the proposed facility site parcel and of all abutters to the facility site parcel, (from assessor's maps or available surveys). Indicate any access easement or right of way needed for access from a public way to the facility site, and the names of all abutters or property owners along the access easement or who have deeded rights to

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the easement.

c. Existing Conditions Plan: A recent survey of the area within 500 feet of the facility site at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) with topography drawn with a minimum of 10 feet (3 meter) contour intervals, showing existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, existing water wells and springs. Show the boundary of any wetlands or floodplains or watercourses; and of any bodies of water included in the Shoreland Zoning District within 500' from the facility site. The survey plan must have been completed, on the ground, by a land surveyor (registered in Maine) within two years prior to the application date.

d. Proposed Site Plans: Proposed facility site layout, grading and utilities must be at the same scale or larger than the existing conditions plan.

- i. Proposed tower location and any appurtenances, including supports and guy wires, if any, and any accessory building (communication equipment shelter or other) indicate property boundaries and setback distances to the base(s) of the tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements. Where protective fencing is proposed, indicate setback distances from the edge of the fencing.
- ii. Indicate proposed spot elevations at the base of the proposed tower and at the base of any guy wires, and the corners of all appurtenant structures.

e. Proposed Equipment Plan:

- i. Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10'.
- ii. Number of antennas and repeaters, as well as the exact locations, of antenna(s) and of all repeaters (if any) located on a map as well as by degrees, minutes and seconds to the nearest tenth of latitude and longitude.
- iii. Mounting locations on tower or structure, including height above ground.
- iv. A recent survey of the facility site at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing horizontal and radial distances of antenna(s) to nearest point on property line, and to the nearest dwelling unit
- v. Antenna type(s), manufacturer(s), model number(s).
- vi. For each antenna, the antenna gain and antenna radiation pattern.
- vii. Number of channels per antenna, projected and maximum.
- viii. Power input to the antenna(s).
- ix. Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.
- x. Output frequency of the transmitter(s).
- xi. For major modification of an existing facility with multiple emitters, the results of an intermodulation study to predict the interaction of the additional equipment with existing equipment.

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C. **Submission Waiver:** The Planning Board, as appropriate may waive any of the application submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any application submission requirement may be granted only if the Planning Board finds in writing that due to special and unique circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

SECTION 13: MONITORING AND EVALUATION OF COMPLIANCE

A. **Maintenance:** The owner of the facility shall maintain the PWSF in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, maintenance of the buffer areas, landscaping, and camouflage materials. The Planning Board may direct the owner to perform maintenance that it determines to be required.

B. **Monitoring Protocol:** A determination of the RF exposure shall be conducted by a Planning Board selected independent radio frequency engineer to demonstrate compliance with FCC (Federal Communications Commission) and NCRP (National Council on Radiation Protection and Measurements) guidelines. Unless preempted by federal regulation, determination shall be by means of actual measurements, paid for by the applicant. The property owner and the owner of the PWSF shall agree that the Town and its appointed representative(s) may enter the subject property to obtain RFR measurements, noise measurements, and to perform maintenance and safety inspections at the expense of the carrier. In the case of taking RFR and or noise measurements, the municipality may enter without any advance notice to either the PWSF owner or the property owner. In all other cases, the municipality shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the municipal representatives when the inspections are conducted.

C. **Excessive Exposure:** Should the monitoring of a facility site reveal that the site exceeds the current FCC guidelines, the owner(s) of all facilities utilizing that site shall be so notified. In accordance with FCC requirements, the owner(s) must immediately reduce power or cease operation as necessary to protect persons having access to the site, tower or antennas. Additionally, the owner(s) shall submit to the Rome Planning Board a plan for the correction of the situation that resulted in excessive exposure. Failure to act as described above shall result in revocation of the conditional use permit and violations are subject to penalties as provided by Section 15 of this Ordinance.

D. **Tower structural integrity:** The Planning Board shall arrange, at owner's expense, for an independent consultant (a licensed professional structural engineer) to conduct inspections of the towers structural integrity and safety. Guyed towers shall be inspected every three years. Monopoles and non-guyed lattice towers shall be inspected every five years. A report of the inspection results shall be prepared by the independent consultant and submitted to the Planning Board and Rome Code Enforcement Officer. Any major modification of an existing facility shall require a new conditional use permit.

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E. **Building Code - Safety Standards:** To ensure the structural integrity of PWSFs, the owner of the facility shall ensure that it is constructed and maintained in compliance with the standards contained in applicable local building codes and the applicable standards for PWSFs that are published by the Electronics Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a PWSF fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the PWSF, the owner shall have thirty (30) days to bring such PWSF into compliance with such standards. If the owner fails to bring such PWSF into compliance within thirty (30) days, such action shall constitute abandonment and grounds for the removal of the facility as abandoned at the owner(s) expense through execution of the posted security.

F. **Unsafe Structure:** Should the inspection of any tower reveal any structural defect(s) which, in the opinion of the independent consultant render(s) that tower unsafe, the following actions must be taken. The owner(s) of the tower shall submit a plan to remediate the structural defect(s). The Planning Board and Rome Code Enforcement Officer shall determine a schedule to accomplish complete remediation of structural defect(s). Failure to accomplish this remediation of structural defect(s) within the specified time frame shall be a violation of the conditional use permit and subject to penalties as specified in Section 15 of this Ordinance.

G. **Certificate of Insurance:** The applicant shall submit annually to the Town of Rome a Certificate of Insurance showing public liability insurance coverage of not less than \$1 million Combined Single Limit.

SECTION 14: REMOVAL REQUIREMENTS

Any telecommunications facility that ceases to operate for a period of five years shall be removed. Cease to operate is defined as not performing the permitted functions associated with the telecommunications facility and its equipment on a continuous and ongoing basis for a period of five years. At the time of removal, the facility site shall be remediated such that all telecommunications facility improvements which have ceased to be utilized are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the site shall be re-vegetated. Applicant shall provide a financial surety bond for the cost of removal. Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 6. The amount of the security shall be based upon the removal cost plus, fifteen percent (15%) provided by the applicant and certified by a professional civil engineer licensed in Maine. No building permit may be issued until the applicant has deposited the just described amount of the security with the Town. The owner of the facility shall provide the Planning Board with revised removal cost estimate and structural evaluation prepared by a professional civil engineer licensed in Maine every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.

A. **Failure to Remove:** If the owner of the facility does not remove the facility upon the

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Planning Board's order, then the Municipal Officers shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Municipal Reviewing Authority. If the abandoned facility is not removed within ninety (90) days, the municipality may execute on the security to pay for this action.

B. Failure to Maintain: If the owner of the facility fails to maintain the facility in accordance with the directions of the Municipal Officers pursuant to paragraph 5 (a), then the Municipal Reviewing Authority, shall after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Municipal Reviewing Authority. If the abandoned facility is not removed within ninety (90) days, the Municipality may execute on the security to pay for this action.

SECTION 15: ENFORCEMENT / PENALTIES:

A. Enforcement.

The Planning Board and the Selectmen, through the Code Enforcement Officer, shall administer and enforce this Ordinance.

B. Penalties.

Whoever violates this Ordinance is subject to all of the penalties and remedies described under 30-A MRSA, Sec. 4452 and by a fine of not less than \$100 nor more than \$2,500 per offense with each day on which such violation continues. Each day in violation shall constitute a separate offense. When actions taken to enforce the Ordinance under Sections 13 or 14 do not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, shall institute or cause to be instituted any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Municipality. Each day that the violation continues constitutes a separate offense with maximum fines of two thousand five hundred dollars (\$2,500.00) per offense. There is a twenty-five thousand dollar (\$25,000.00) maximum fine per offense upon the second conviction within two (2) years for violations under this Ordinance.

SECTION 16: APPEALS

A. Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

1. **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

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2. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

a. Variance Appeals. Variances may be granted only under the following conditions:

1. Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
2. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
3. The Board shall not grant a variance unless it finds that:
 - (i) The proposed structure or use would meet the provisions of Section 11 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
4. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

3. Administrative Appeals: When the Board of Appeals reviews a decision of the **Code Enforcement Officer** the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the **Planning Board**, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

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4. Appeal Procedure:

a. Making an Appeal

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
2. Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - i. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - ii. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
3. Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
4. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

b. Decision by Board of Appeals

1. A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
2. The person filing the appeal shall have the burden of proof.
3. The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
4. The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

5. Appeal to Superior Court: Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

6. Reconsideration: In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board

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of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

SECTION 17: SEVERABILITY CLAUSE

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision hereof.

SECTION 18: ADDENDUM: DEFINITIONS

ADEQUATE COVERAGE - Coverage is considered to be "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment like Rome, this would be a signal strength of at least -90dbm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. For the limited purpose of determining whether the use of a repeater is necessary or desirable, there shall be deemed not to be adequate coverage within said holes. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

ADEQUATE CAPACITY - Capacity is considered to be "adequate" if the grade of service (see definition) is p.05 or better for at least 50% of the days in a preceding month, prior to the date of application, as measured using direct traffic measurement of the telecommunication facility in question, where the call blocking is due to frequency contention at the antenna(s).

ADEQUATE SIGNAL COVERAGE- Coverage is "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular or Personal Communications Services (PCS) communications in a rural or non-urban environment, this would be a signal strength of at least -92dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the

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signal does not regain.

ANTENNA - A device which is attached to a PWSF, or other structure for transmitting and receiving wireless radio signals.

ANTENNA ARRAY - A collection of antennas attached to a mount to send and receive radio signals.

AVAILABLE SPACE - The space on a tower or structure to which antennas of a telecommunications provider are structurally to be attached.

AVERAGE TREE CANOPY HEIGHT - An average height found by inventorying the height, at above ground level (AGL) of all trees over twenty (20) feet in height within the area that extends for a distance of one hundred fifty (150) feet from the base of the mount, security barrier, or designated clear area for access to equipment whichever is greatest. Trees that will be removed for construction shall NOT be used in this calculation.

BASE STATION - The primary sending and receiving site in a wireless telecommunications network. More than one base station and/ or more than one variety of telecommunications provider can be located on a single tower or structure.

BULLETIN 65 - Published by the FCC Office of Engineering and Technology specifying radiofrequency radiation exposure levels and methods to determine compliance.

CAMOUFLAGED - A PWSF that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

CARRIER - A company that provides personal wireless services also sometimes referred to as a provider.

CHANNEL - The segment of the radiation spectrum from an antenna that carries one signal. An antenna may radiate on many channels simultaneously.

COLLOCATION - The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

COMMUNICATION EQUIPMENT SHELTER - An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for PWSF such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

COMMUNITY SCALE - Compatibility between the proposed PWSF and its surroundings in relation to the height, mass, materials, contrasts, and proportion of the proposed facility and its surroundings.

dBm - Unit of measure of the power level of a signal expressed in decibels above 1 milliwatt.

ENVIRONMENTAL ASSESSMENT (EA) - An EA is a document required by the Federal

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Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a PWSF is placed in certain designated areas.

FACILITY SITE - A property, or any part thereof, which is owned or leased by one or more telecommunications providers and upon which one or more telecommunications facility(s) are located. See Personal Wireless Service Facility.

FALL ZONE - The area on the ground from the base of a structure mounted Personal Wireless Service Facility that forms a circle with a diameter equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

FCC - Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

GRADE OF SERVICE - A measure of the percentage of calls which are able to connect to the base station, during the busiest hour of the day. Grade of service is expressed as a number, such as p.05 - which means that 95% of callers will connect on their first try. A lower number (p.04) indicates a better grade of service.

GUYED TOWER - A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

HEIGHT - The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

LATTICE TOWER - A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding.

LOCATION - References to site location as the exact longitude and latitude, to the nearest tenth of a second with bearing or orientation referenced to true North.

MAJOR MODIFICATION OF AN EXISTING FACILITY - A proposed change in any of the following: power input or output, number of antennas, antenna type or model, repositioning of antenna(s), dimensions of an existing and permitted tower or other structure designed to support telecommunications transmission, receiving and/ or relaying antennas and/ or equipment. Any changes to buildings, equipment shelters, site or roads are not covered by this Ordinance.

MAST - A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

MONOPOLE - A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel, galvanized metal, concrete or other unpainted or painted material that is designed for the placement of antennas and arrays along the shaft.

MICROCELL PCS - A wireless personal communication service which uses a cable television system, and no towers, to provide cellular service.

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MONITORING - The measurement, by the use of instruments in the field, of non-ionizing radiation exposure at a site as a whole, or from individual telecommunications facilities, towers, antennas or repeaters.

MONITORING PROTOCOL - The testing protocol used to determine compliance with the National Council on Radiation Protection and Measurements guidelines, related to exposure from existing and new telecommunications facilities upon adoption of this Ordinance.

MOUNT - The structure or surface upon which antennas are mounted, (interior or exterior) including the following two types of mounts:

- a. **GROUND-MOUNTED** - A mount that is a structure affixed to the ground, other than a building, upon which one or more antennas are mounted.
- b. **BUILDING MOUNT** - A mount that is: (1) the roof or side of a building upon which one or more antennas are mounted; or (2) a mount that is a structure affixed directly to the roof or side of a building and not part of the building, upon which one or more antennas are mounted.

PERSONAL WIRELESS SERVICES - Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: cellular services, personal communications services, specialized mobile radio services, and paging services as described in the Telecommunications Act of 1996, amended.

PERSONAL WIRELESS SERVICE FACILITIES (PWSF) - Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended and this Ordinance. PWSFs include a mount, antenna, equipment shelter, and other related equipment. A PWSF shall not include any of the following:

- a. Wireless communication facilities for emergency communications by public officials.
- b. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC)
- c. Parabolic Antennae less than seven (7) feet in diameter, that are an accessory use of the property.
- d. Temporary Personal Wireless Service Facilities in operation for one maximum period of one hundred eighty (180) days. Such temporary facilities shall be removed prior to 30 days following the maximum period.
- e. An antenna that is an accessory use to a residential dwelling unit, provided the PWSF is not used for commercial purposes.

RADIAL PLOTS - Radial plots are the result of drawing equally-spaced lines (radials) from the point of the antenna, calculating the expected signal and indicating this graphically on a map. The relative signal strength may be indicated by varying the size or color at each point being

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studied along the radial; a threshold plot uses a mark to indicate whether that point is strong enough to provide adequate coverage - i.e., the points meeting the threshold of adequate coverage. The drawback is the concentration of points close to the antenna and the divergence of points far from the site near the ends of the radials.

RADIATED-SIGNAL PROPAGATION STUDIES OR COVERAGE PLOTS - Computer generated estimates of the signal emanating, and prediction of coverage, from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tools for determining whether a site will provide adequate coverage for the telecommunications facility proposed for that site.

RADIO FREQUENCY (RF) ENGINEER - An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

RADIO FREQUENCY RADIATION (RFR) - The emissions from PWSFs.

REPEATER - A small receiver/relay transmitter of relatively low power output designed to provide service to areas that are not able to receive adequate coverage directly from a base or primary station.

SECURITY BARRIER - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

STRUCTURALLY ABLE - The determination that a tower or structure is capable of carrying the load imposed by the proposed new antennas under all reasonably predictable conditions as determined by professional structure engineering analysis.

TELECOMMUNICATIONS PROVIDER - An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

TILED COVERAGE PLOTS - Tiled plots result from calculating the signal at uniformly spaced locations on a rectangular grid, or file, of the area of concern. Unlike radial plots, tiled plots provide a uniform distribution of points over the area of interest; usually the same grid will be used as different sites are examined, and it is not necessary that the transmitter site be within the grid or area of interest. As with radial plots, the graphic display or plot can be either signal strength or adequate threshold. This method requires substantially more topographic data and longer (computer) execution time than radial plots, but is preferable for comparative analysis.

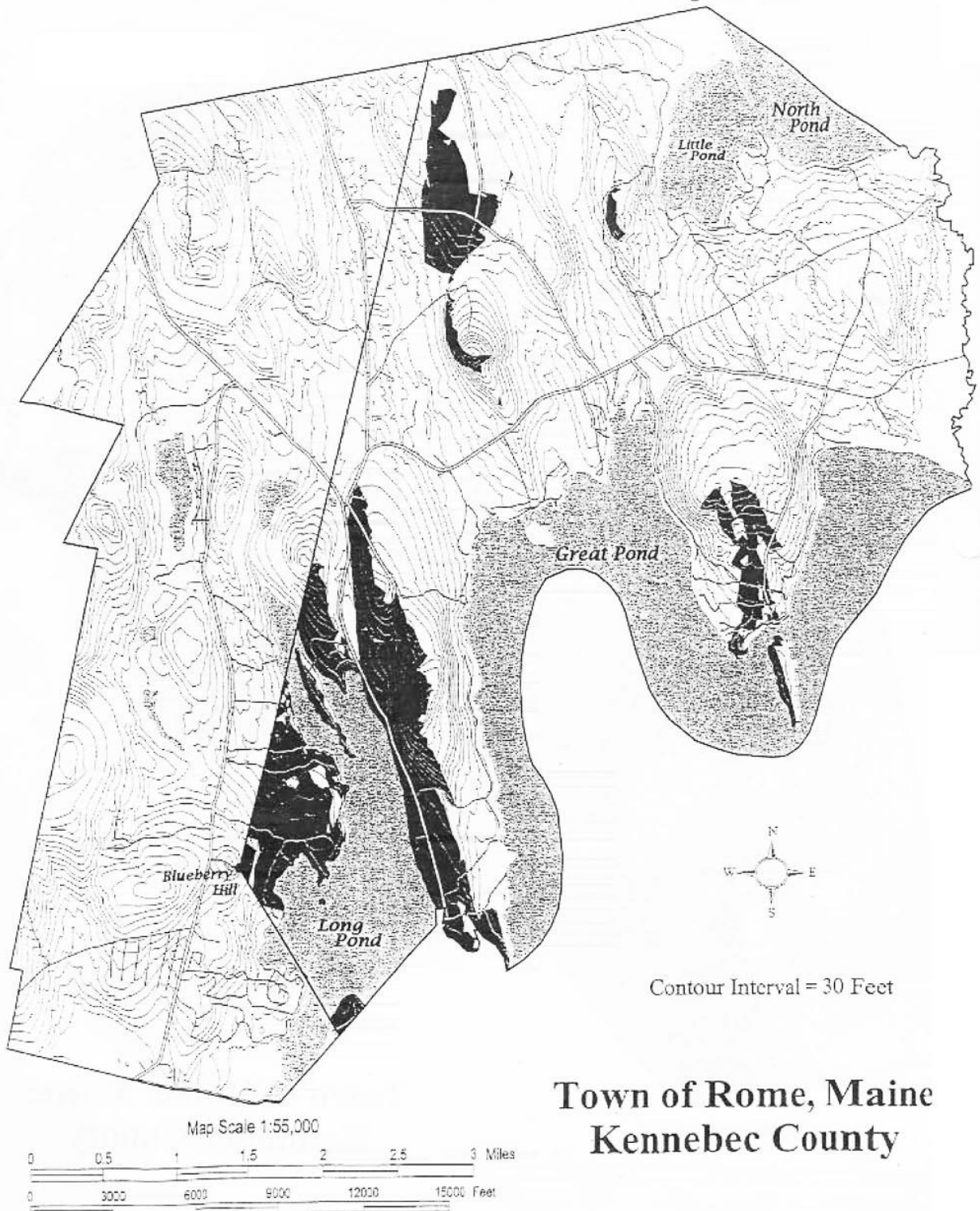
TOWER - A lattice structure or framework, either self-supporting or guyed, (and including the guy wires and their anchor points) or monopole, that is designed to support telecommunications transmission, receiving and/or relaying antennas and/ or equipment.

WIRELESS TELECOMMUNICATIONS FACILITY - Any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal

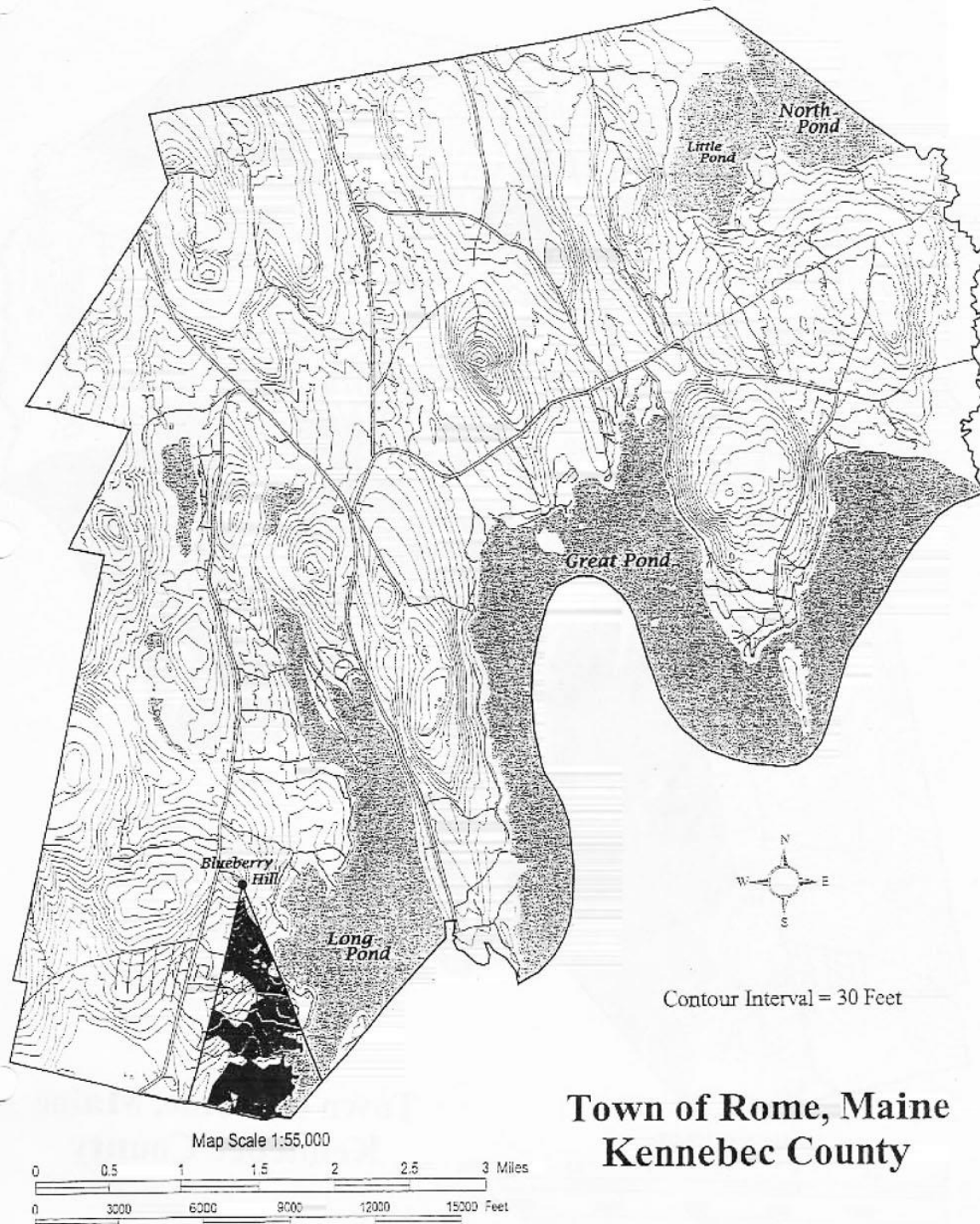
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communications service (PCS) or pager services. This excludes buildings, grounds, and access roads. See Personal Wireless Services Facility (PWSF).

A Appendix A **AREAS VISIBLE FROM
Eastern Side of Blueberry Hill**

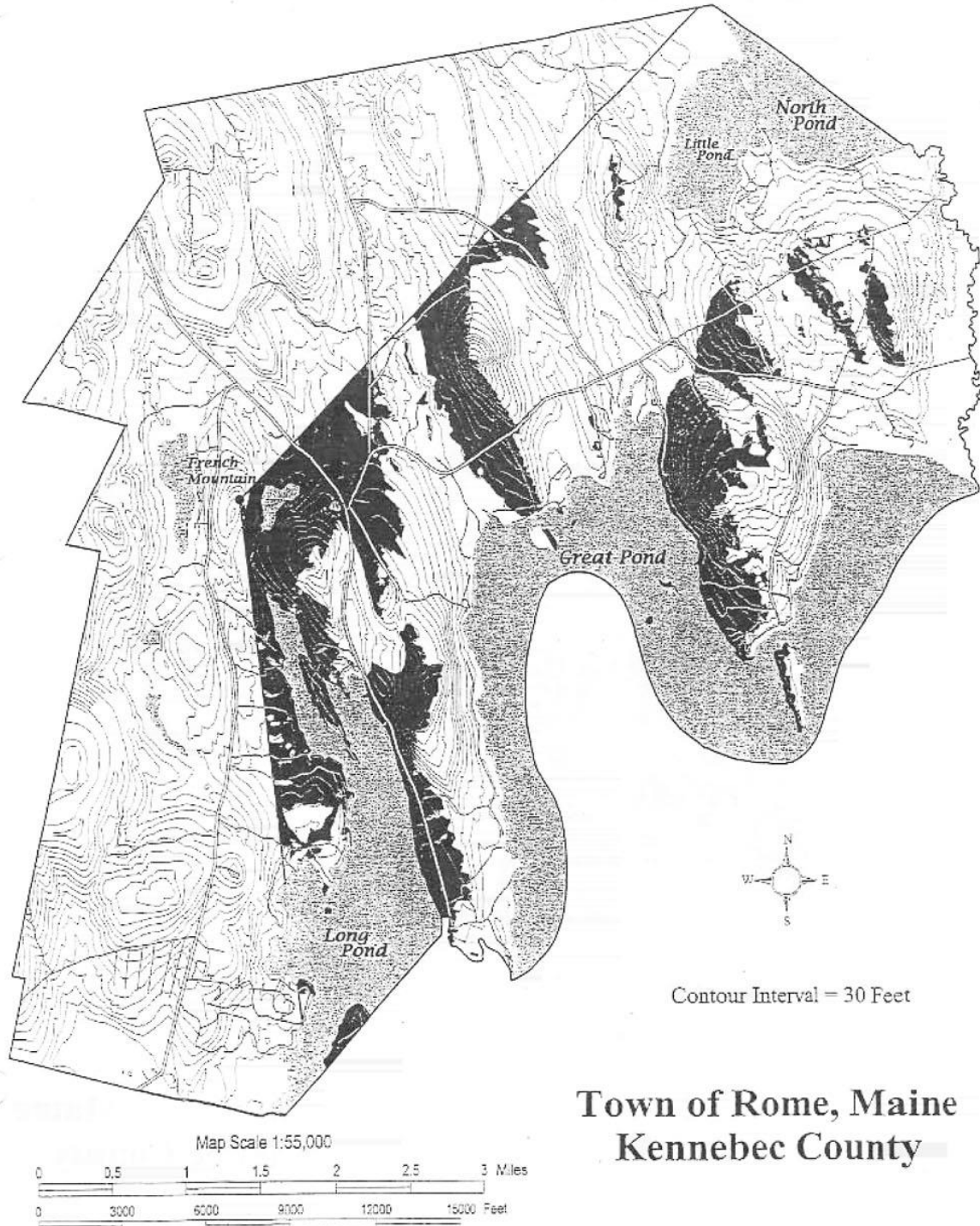


AREAS VISIBLE FROM Southern Side of Blueberry Hill



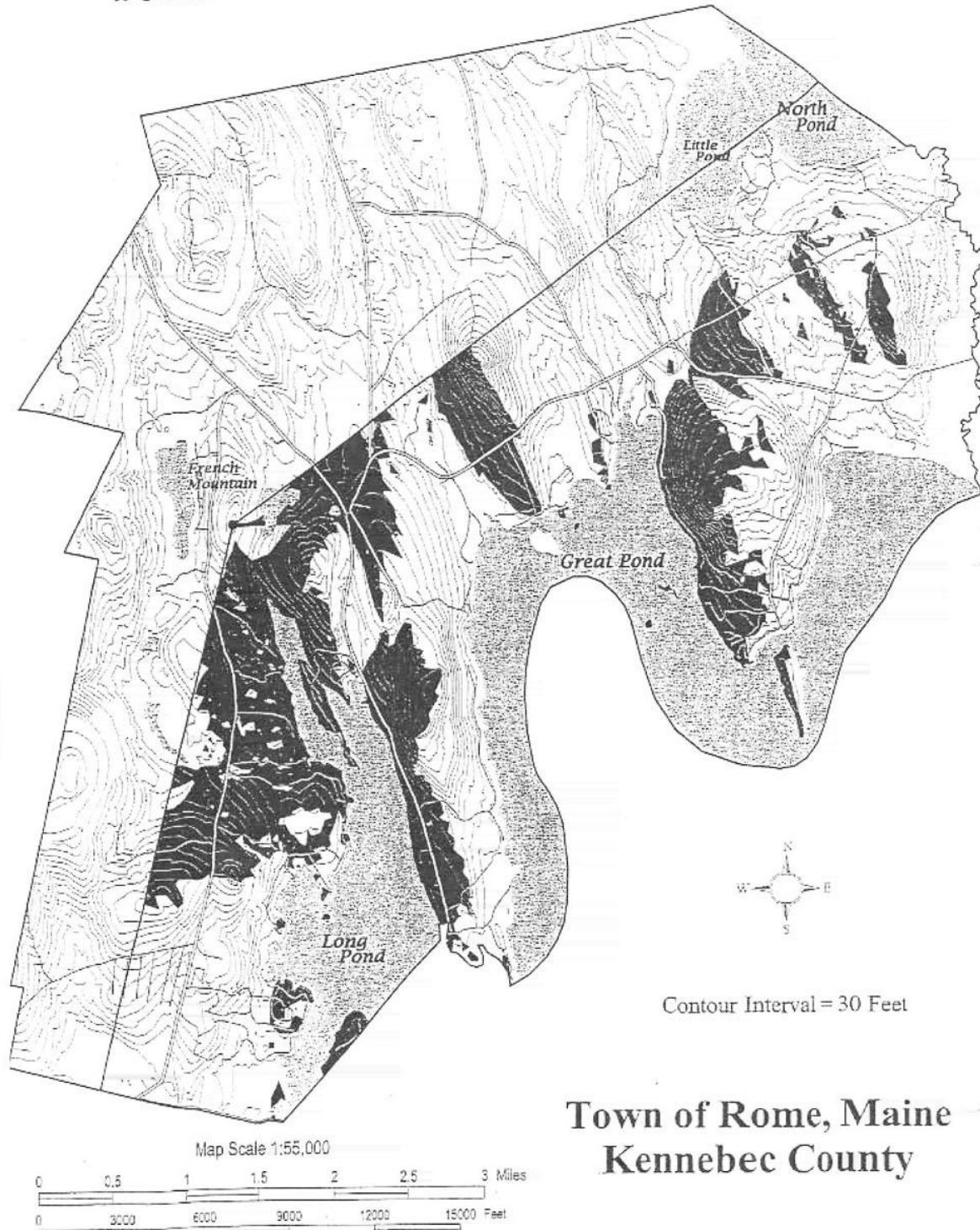
Appendix A

AREAS VISIBLE FROM Eastern Side of French Mountain



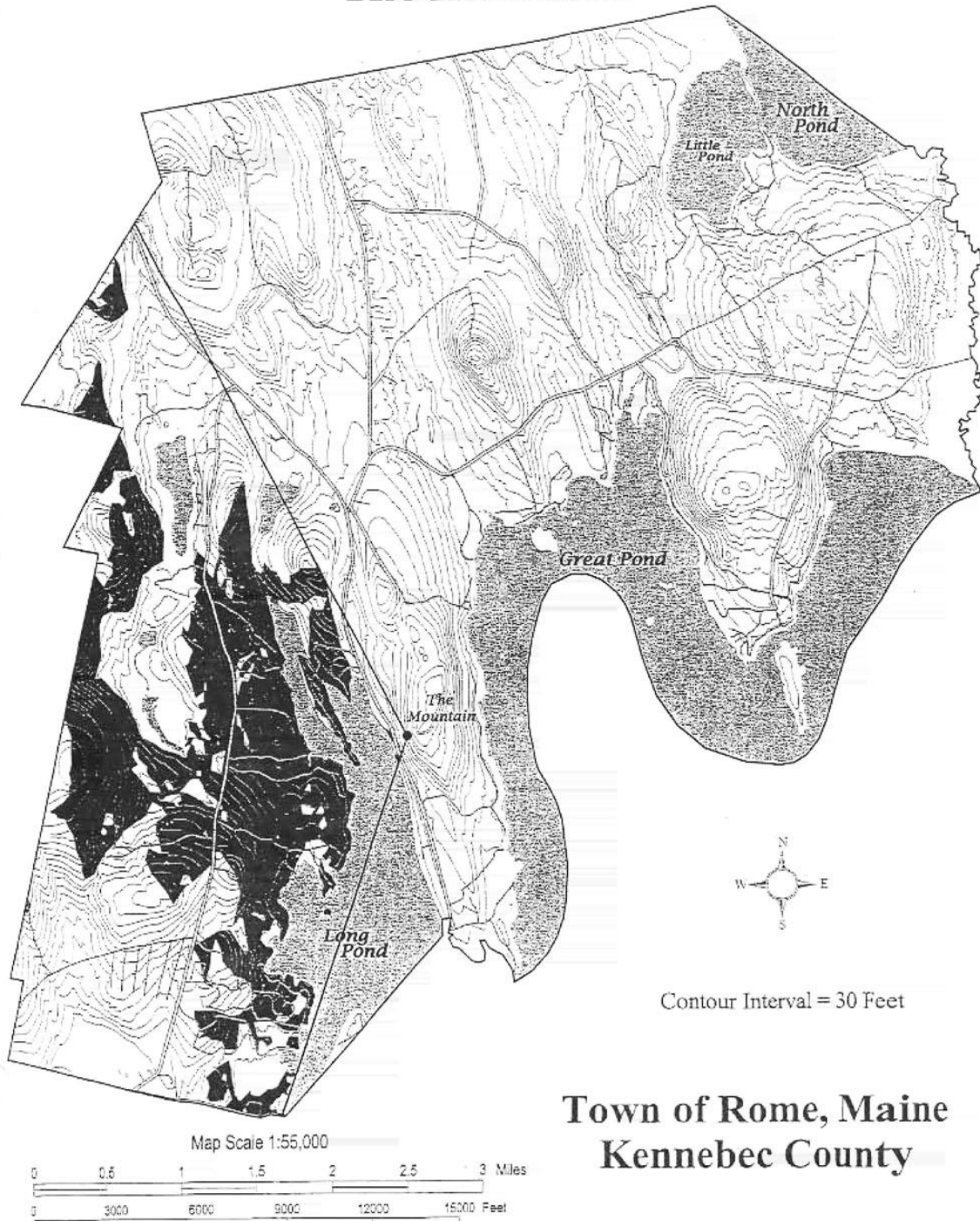
Appendix A

AREAS VISIBLE FROM Southeastern Side of French Mountain



Appendix A

AREAS VISIBLE FROM The Mountain



Appendix A

AREAS VISIBLE FROM Mount Phillip

